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By Certified Mail
Return Receipt Requested

June 1, 2015

Tom Lynch
Chief Executive Officer
TE Connectivity Ltd.
1050 Westlakes Drive
Berwyn, PA 19312

Stephen Douglas
EHS Manager
Tyco Electronics Corp.
300 Constitution Drive
Menlo Park, CA 94025

CT Corporation System
Agent for Service of Process
TE Connectivity Networks, Inc.
Tyco Electronics Corporation
Tyco Electronics Holding Corp.
818 W. Seventh St., 2nd Floor
Los Angeles, CA 90017

Re: Notice of Intent to File Citizen Suit Pursuant to the Federal Clean Water Act

Gentlemen and Agent:

On behalf of the Plastic Pollution Coalition, a project of the Earth Island Institute (collectively, "PPC"), whose address is 2150 Allston Way #460, Berkeley, California 94704, and telephone number is (510) 859-9100, I write regarding violations under the federal Clean Water Act ("CWA" or "Act") by TE Connectivity *dba* Tyco Electronics Corporation, TE Connectivity Networks, Inc., and TE Circuit Protection (collectively, "TE Connectivity"), with regard to the facility located at: **300 Constitution Drive, Menlo Park, California 94025** (the "Facility"). The purpose of this letter is to provide TE Connectivity and its officers/managers named above with notice of these violations and notice of PPC's intent to file a lawsuit against TE Connectivity and the individuals named above in sixty (60) days under the CWA in Federal District Court. 33 U.S.C. § 1365(a)(1).

TE Connectivity has consistently violated the Clean Water Act over the last five years, including in the last-reported wet season of 2013-2014. TE Connectivity's officers certified to the State of California that the corporation had read the California storm water permit and was in compliance with its requirements. However, as detailed below, information available to PPC indicates that TE Connectivity has discharged, and continues to discharge, pollutants unlawfully

from the Facility and has routinely failed, and continues to fail, to fully comply with the reporting and monitoring requirements under the Act.

The Act prohibits the discharge of stormwater absent strict compliance with its terms and the attendant state permits. Section 402(p) of the CWA establishes a framework for regulating pollutants associated with industrial activity. 33 U.S.C. § 1342(p). In California, any person who discharges storm water associated with industrial activity must comply with the terms of California's general permit covering such discharges ("Stormwater Permit").[1] 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.41(a); Stormwater Permit,§ C(1). "Any [Stormwater] Permit noncompliance constitutes a violation of the [CWA] and the [California] Porter-Cologne Water Quality Control Act." Stormwater Permit, § C(1). Broadly, the Stormwater Permit prohibits discharges of materials other than storm water directly or indirectly to waters of the United States and storm water discharges that "cause or threaten to cause pollution, contamination, or nuisance." *Id.*, § A. The Stormwater Permit imposes a duty to "take all responsible steps to minimize or prevent any discharge in violation of [the Stormwater] Permit which has a reasonable likelihood of adversely affecting human health or the environment." *Id.*, § C(4).

California laws also prohibit the discharge of plastic pollution. The California Legislature, through passage of the Nurdles Law (California Water Code section 13367) specifically targets plastic pollution, establishing minimum best management practices ("BMPs") for facilities that manufacture, handle, and transport preproduction plastic. The Nurdles Law prescribes specific BMPs that should be implemented at each industrial site handling plastic pellets. The minimum BMPs include: containment systems at all onsite storm drain discharge locations; measuring to prevent discharge of plastic pellets during loading and unloading; storage of pellets in sealed containers; installation of capture devices under transfer valves and devices during loading and unloading; and vacuum or vacuum type system for quick cleanup of fugitive plastic pellets. Cal Water Code § 13367(e)(1) – (5).

TE Connectivity has consistently violated and continues to violate the Act, the Stormwater Permit, and California's Nurdles Law. In addition to the violations explicitly noted herein, this notice letter ("Notice") covers all CWA violations of the same type evidenced by information that becomes available after the date of this Notice.

Based on review of the Water Board's records, TE Connectivity is the operator of the Facility and the Secretary of State records indicate CT Corporation is the registered agent for service of process for the corporations. This letter puts TE Connectivity, Tom Lynch, and Stephen Douglas on notice of violations and is being sent to you as the responsible owners, officers, and/or operators of the Facility, or as the registered agent for the individual and entity addressees/recipients of this notice.

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[1] National Pollutant Discharge Elimination System General Permit No. CAS000001, California Water Quality Control Board, Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities. The state has adopted a new Stormwater Permit, Order No. 2014-0057-DWQ ("2014 Permit"), effective July 1, 2015. The violations alleged in this Notice also violate the requirements of the 2014 Permit, which is as or more stringent than the current Stormwater Permit.

I. TE Connectivity Background

TE Connectivity is a global company. The Facility in Menlo Park has 12 buildings and occupies 68 acres right across from the Bayfront Expressway (Route 84), Bedwell Bayfront Park, and the San Francisco Bay. It is located very close to the Don Edwards San Francisco Bay National Wildlife Refuge. TE Connectivity manufactures preproduction plastics for other manufacturers, including pellets, strands, and sheets from polyethylene (the most common industrial form of plastic), as well as plastic tubing and molded parts. It also manufactures polymer-based circuit protection devices with a production process that includes plastics compounding, plastics extrusion, lamination with metallic foil, punching, soldering, and resin coating. TE Connectivity's manufacturing processes involve the use of carbon black and nickel polymers, nickel and copper metals, solder, zinc and antimony oxides and polymers, glycerin, cleaning solvents, and solvent-based inks.

TE Connectivity has violated the CWA repeatedly and consistently over the last 5 years, demonstrating disregard for the terms of its permit. Most notably, TE Connectivity regularly discharges zinc in concentrations as high as 35 times the federal Environmental Protection Agency's (EPA) benchmarks.[2] *See* Attachment A. Industrial sources of zinc, a heavy metal, negatively impact our waterways and San Francisco Bay. TE Connectivity also has discharged Total Suspended Solids ("TSS") in excess of the EPA benchmarks and water of unacceptably high specific conductivity and pH levels, both of which indicate the likelihood of other pollutants. TE Connectivity's consistent exceedances of the EPA's benchmarks at the Facility show past and continuing failures to use BMPs to reduce or eliminate pollutants.

The company's proximity to the Bay accentuates storm water pollution concerns. The company stencils the message "No Dumping -- Flows to Bay" as a structural control next to storm drain inlets. Yet TE Connectivity consistently discharges unacceptably high levels of pollutants from its own industrial activities.

Based on our investigation, TE Connectivity has been operating the Facility at its present location since at least 2001. The company certifies in its Notice of Intent to comply with the Stormwater Permit that it is classified under SIC code 3089 (Plastic Products), 3082 (Unsupported Plastics Profile Shapes), and 2821 (Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers).

II. TE Connectivity's Violations of the Clean Water Act and Stormwater Permit

Our investigation, including a review of TE Connectivity's self-reported annual reports submitted to the State Water Resources Control Board and/or the Regional Water Board, indicates that TE Connectivity routinely discharges from the Facility storm water that exceeds the EPA's benchmarks, polluting the San Francisco Bay, and likely causes contamination and

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[2] The EPA has established benchmarks for pollutant discharges, which serve as the parameters to determine if a facility is properly implementing safeguards and procedures to prevent unlawful discharges. 65 Fed. Reg. 64746, Table 3. These benchmarks are relevant and an objective standard to evaluate whether a facility has implemented the requisite BAT and BCT.

adverse impacts to the environment, in violation of the Water Quality Control Plan for the San Francisco Basin ("Basin Plan"). Investigations also indicate that TE Connectivity's site operations include open dumpsters and various industrial refuse or materials that are exposed to storm water.

The Stormwater Permit governs storm water discharges by among other things:

- Prohibiting discharges of materials other than storm water without a separate NPDES permit. Discharge Prohibition A.1.

- Prohibiting the discharge of storm water pollutants that cause or threaten to cause pollution, contamination, or nuisance. Discharge Prohibition A.2.

- Requiring facilities to reduce or prevent pollutant associated with industrial activities in storm water with best available technology economically achievable ("BAT") for toxic pollutants such as zinc and best conventional pollutant control technology ("BCT") for conventional pollutants such as TSS. Effluent Limitation B.3.

- Prohibiting storm water discharges and authorized non-storm water discharges to surface water or groundwater that adversely impact human health or the environment. Receiving Water Limitation C.1.

- Prohibiting storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable water quality standard.[3] Receiving Water Limitation C.2.

As discussed in detail below, TE Connectivity is violating all of the above provisions.

A. Unlawful Discharges of Pollution

Samples of storm water discharged from TE Connectivity demonstrate exceedances of the EPA's benchmarks, the Water Board standards, and/or the Basin Plan's water quality standards limits *38 times* in the last 5 years. *See* Attachment A; Stormwater Permit, Effluent Limitation B of the Permit. Storm water discharges from the Facility in violation of the Stormwater Permit include: zinc as high as 4.5 mg/L and over 35 times in excess of the EPA benchmark of 0.117 mg/L; TSS as high as 250 mg/L and in excess of the EPA benchmark of 100 mg/L; pH values as high as 9.11 s.u. and above the EPA benchmark value of 9.0 s.u.; and specific conductivity levels of 550 umhos/cm and above the Water Board's recommended maximum level of 200 umhos/cm. *See* TE Connectivity's Annual Storm Water Discharge Report for 2009-2010, 2010-2011, 2011-2012, 2013-2014 ("Annual Reports"). In short, excessive levels of pollutants have been discharged by the Facility, on an ongoing basis, into storm water over the past five years.

[3] Water quality standards are established in the San Francisco Bay Basin, Region 2, Water Quality Control Plan, amended as of December 31, 2011, available at: www.waterboards.ca.gov/rwqcb2/basin_planning.shtml (last accessed May 10, 2015).

To date, TE Connectivity has not revised its Storm Water Pollution Prevention Plan ("SWPPP") to address these consistent violations of the Stormwater Permit. The failure to do so violates the Stormwater Permit, Receiving Water Limitation C.3, and these violations have continued since the first exceedances of the EPA Benchmarks and other standards on or before April 27, 2010.

TE Connectivity's reported test results also demonstrate that the Facility has and continues to discharge pollutants without an NPDES permit, particularly with regard to zinc. Stormwater Permit, Discharge Prohibition A.1. The specific conductivity results strongly suggest the presence of additional pollutants in TE Connectivity's storm water that are not among the tested parameters.

Pollutants discharged in storm water are known to degrade water quality and have adverse effects on aquatic life and habitats in the San Francisco Basin. Each instance of a discharge of storm water or other pollutants in violation of discharge prohibitions, receiving water limitations, and/or effluent limitations is a separate and distinct violation off the Stormwater Permit and the CWA. *See* 33 U.S.C. § 1311(a). TE Connectivity and its officers and agents are liable under the CWA for these violations that are ongoing and will likely continue.

B. Failure to Adequately Sample and Analyze Storm Events from Each Discharge Point

With certain limited exceptions, the Stormwater Permit requires that each covered facility sample *two* storm events per wet season from *each* of its stormwater discharge locations. Stormwater Permit, Sections B.5.a and B.7.a. "Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *Id.* "All storm water discharge locations shall be sampled." *Id.* "Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled." *Id.*

TE Connectivity has failed to collect the two required storm water samples from each storm water discharge location in each of the last five years despite discharging storm water from its facility. TE Connectivity has extensive industrial activities and a complex storm water drainage system. *See* TE Connectivity 2013 SWPPP ("2013 SWPPP"), Figures 1A – 3D. Yet, during the past five years, TE Connectivity has only sampled and analyzed storm water discharges from four locations at the Facility. PPC alleges, and the 2013 SWPPP affirms, that these four collection points do not include each storm water discharge location on the 68-acre site, including but not limited to, all storm water from Building 305A and 305B, any stormwater from Distribution buildings 300, and any storm water from Research and Development building 303.

In addition, in the wet season for 2009-2010 and 2010-2011, TE Connectivity failed to analyze and inspect stormwater samples from the *first* rain event in the wet season and failed to sample *two* storm events. 2009-2010 Annual Report; 2010-2011 Annual Report.

The failure to collect samples from all of the Facility's discharge locations for five rainy seasons results in numerous distinct violations of the Stormwater Permit. Each instance of failing to sample first rain events and failing to sample twice a wet season are also distinct violations. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal CWA, TE Connectivity is subject to penalties for violations of the Storm Water Permit and CWA since June 2010. *See* 33 U.S.C. § 1311(a). TE Connectivity and its officers and agents are liable under the CWA for these violations.

C. Failure to Develop, Implement, and Revise an Adequate Storm Water Pollution Prevention Plan and to Take Responsible Steps to Minimize or Prevent Discharges in Violation of the Stormwater Permit

All facilities covered under the Stormwater Permit, including TE Connectivity, must develop and implement a SWPPP. Stormwater Permit, Section A.1. The SWPPP must identify and evaluate the sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges. The SWPPP also must identify and implement site-specific best management practices (BMPs) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are ineffective; and the SWPPP must include BMPs that achieve BAT and BCT. *Id.*, Sections A.2 and B.3. The permittee must take responsible steps to minimize and prevent any discharge that has a reasonable likelihood of adversely affecting human health or the Environment. *Id.*, Section C.4.

Requirements under the SWPPP are further detailed as it must include: (1) a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system (and the direction of flow for discharges), structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and an outline of all impervious areas of the facility *(id.,* Section A.4); (2) a list of significant materials handled and stored at the site and a description of where that material is being stored, received, shipped, and handled, as well as the quantities and frequency; and a list of all significant raw materials, intermediate products, final or finished products, recycled materials, and waste or disposed materials *(id.,* Section A.5); (3) a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources and a description of locations where soil erosion may occur *(id.,* Section A.6); and (4) an assessment of all industrial activities and potential pollutant sources *(id.,* Section A.7).

The SWPPP and facility practice do not include even the minimum BMPs required by the Nurdles Law. The SWPPP fails even to provide the volume of the three polyethylene pellet silos at the Facility. Visual observation has indicated spills of plastic pellets in the past, which PPC believes is ongoing because of the lack of plastic-specific BMPs. *See* 2013-2014 Annual Report.

Despite continuing violations of the effluent and discharge limitations, information available to PPC indicates that the TE Connectivity has not revised the SWPPP as necessary to ensure compliance with the CWA, in violation of Section A.9 and A.10 of the Stormwater

Permit. TE Connectivity has failed, and continues to fail, to identify all significant materials and to develop and implement adequate BMPs to prevent the exposure and subsequent discharge of pollutants at levels that do not impair the receiving water. Investigations also indicate the Facility has wastes and industrial activities that are exposed to rainfall and not covered with structural BMPs.

Every day that the Facility operates without revising and correcting the deficiencies in its SWPPP is a separate and distinct violation of the CWA and Stormwater Permit. *See* Stormwater Permit, Sections A.9 and A.10. TE Connectivity therefore has been daily and continuously in violation of its SWPPP requirements every day since at least April 27, 2010.

D. Failure to Analyze for All Likely Pollutants in Stormwater

The Stormwater Permit requires facilities to sample and analyze for all toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities as well as for specific analytical parameters associated with a facility's industry. Stormwater Permit, Section B.5.c(ii) and (iii). All facilities covered by the Stormwater Permit must analyze samples for "all toxic chemicals and other pollutants that are likely to be present." Stormwater Permit, B.5.c.

TE Connectivity has not sampled for all of the toxics and pollutants it identified in its own SWPPP that are likely pollutants. By way of example, the only heavy metal TE Connectivity test for is zinc, despite the fact that the Facilities' manufacturing processes include the use of nickel, copper, and lead. Additionally, TE Connectivity does not monitor for triallyl isocyanurate, despite its outdoor storage. At a minimum, TE Connectivity should monitor these additional parameters. Any failure to analyze all likely pollutants is ongoing, and every day TE Connectivity fails to adequately examine all significant pollutants discharged into its storm water is another violation of the CWA and Stormwater Permit.

E. Failure to Certify and File True and Accurate Annual Reports

The CWA and Stormwater Permit require that covered facilities submit an annual report by July 1st of each year to the Executive Officer for the Regional Water Quality Control Board responsible for the area (the Annual Report). Stormwater Permit, Section B.14. Facilities must include in their Annual Reports an analysis of storm water sampling and an evaluation of the storm water controls. *Id.* Finally, the Annual Report must be signed and certified by an appropriate corporate officer. Stormwater Permit, Sections B.14, C.9, and C.10.

As discussed above, TE Connectivity has not complied with a numerous provisions under the CWA and required by the Stormwater Permit. Nonetheless, TE Connectivity and its officers or managers for the past 5 years have inaccurately signed and certified TE Connectivity's Annual Reports or failed to submit certifications. These false or missing certifications constitute violations of the CWA and the Stormwater Permit. Each instance of TE Connectivity failing to submit a complete or correct Annual Report, and every time TE Connectivity or its agent inaccurately purported to comply with Stormwater Permit requirements, subjects TE Connectivity to penalties under the CWA. *See* Stormwater Permit, Sections A.9.d, B.14, C.9, and C.10.

III. Conclusion

Pursuant to the CWA, PPC intends to pursue civil penalties against TE Connectivity for the violations described above, an injunction against TE Connectivity to cease continuing violations, and recovery from TE Connectivity of attorneys' and experts' fees and costs associated with this enforcement action. *See* 33 U.S.C. § 1319(d) (civil penalties); 40 C.F.R. §19.4 (adjustment of civil monetary penalties for inflation); 33 U.S.C. §1365(a) (injunctive relief); and 33 U.S.C. § 1365(d) (recovery of attorney fees and expert fees). Each separate violation of the CWA occurring during the period commencing five years prior to the date of the notice of intent to file suit subjects the violator to a penalty. The CWA authorizes civil penalties of up to $37,500 per day per violation for CWA violations after January 12, 2009.

At the end of the 60-day notice period, PPC intends to file a citizen suit under the CWA against TE Connectivity and its agents. PPC is willing to discuss effective remedies for the violations noted in this letter prior to filing suit. However, PPC does not intend to delay filing a complaint in federal court and therefore requests that TE Connectivity contact us promptly if it wishes to engage in discussions in the absence of litigation.

Sincerely,

James M. Birkelund
Attorneys for Earth Island Institute

Cc via U.S. Mail:

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ATTACHMENT A
Instances of Reported Violations
Storm Water Discharges

Wet Season	Date	Parameter	Sample Location (discharge point)	U.S. EPA Benchmark or Other Limits (mg/L)	Facility Concentration in Discharge (mg/L)
2013-2014	2.26.14	pH	F72	6.0-9.0 s.u.	9.11 s.u.
	2.26.14	Zn	F72	0.117*	0.29
	2.26.14	Zn	F57	0.117*	0.29
	2.26.14	Zn	R15	0.117*	0.46
	2.26.14	Zn	R16	0.117*	0.40
	2.26.14	TSS	R16	100	250
	11.19.13	Zn	F72	0.117*	1.2
	11.19.13	Zn	F57	0.117*	1.0
	11.19.13	Zn	R15	0.117*	0.66
	11.19.13	Zn	R16	0.117*	4.5
	11.19.13	Specific Conductivity	F72	200 umhos/cm	250 umhos/cm
	11.19.13	Specific Conductivity	F57	200 umhos/cm	260 umhos/cm
	11.19.13	Specific Conductivity	R16	200 umhos/cm	380 umhos/cm
2012-2013	2.19.13	Zn	F72	0.117*	0.39
	2.19.13	Zn	F57	0.117*	0.14
	2.19.13	Zn	R15	0.117*	0.68
	12.21.12	Specific Conductivity	F57	200 umhos/cm	230 umhos/cm
	12.21.12	Zn	F72	0.117*	0.32
	12.21.12	Zn	F57	0.117*	0.23
	12.21.12	Zn	R15	0.117*	0.41
	12.21.12	Zn	R16	0.117*	0.25
2011-2012	3.13.12	Zn	F72	0.117*	0.73
	3.13.12	Zn	F57	0.117*	0.42
	3.13.12	Zn	R15	0.117*	0.97
	10.3.11	TSS	F72	100	120
	10.3.11	TSS	F57	100	220
	10.3.11	Specific Conductivity	F72	200 umhos/cm	550 umhos/cm
	10.3.11	Specific Conductivity	F57	200 umhos/cm	310 umhos/cm
	10.3.11	Zn	F72	0.117**	1.7
	10.3.11	Zn	F57	0.117*	2.3
	10.3.11	Zn	R15	0.117*	1.3

Wet Season	Date	Parameter	Sample Location (discharge point)	U.S. EPA Benchmark or Other Limits (mg/L)	Facility Concentration in Discharge (mg/L)
	10.3.11	Zn	R16	0.117*	1.3
2010-2011	5.31.11	Specific Conductivity	F72	200 umhos/cm	340 umhos/cm
	5.31.11	Specific Conductivity	F57	200 umhos/cm	220 umhos/cm
	5.31.11	Zn	F72	0.117*	1.0
	5.31.11	Zn	F57	0.117*	0.48
	5.31.11	Zn	R15	0.117*	0.83
	5.31.11	Zn	R16	0.117*	0.74
	ONLY ONE SAMPLE THIS WET SEASON				
2009-2010	4.27.10	Specific Conductivity	F57	200 umhos/cm	220 umhos/cm
	4.27.10	Zn	F72	0.117*	0.35
	4.27.10	Zn	F57	0.117*	0.19
	4.27.10	Zn	R15	0.117*	0.29
	4.27.10	Zn	R16	0.117*	0.49
	ONLY ONE SAMPLE THIS WET SEASON				

* hardness dependent range of benchmarks